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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re K. L. et al., Persons Coming
Under the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

SHAREA T.,

Defendant and Appellant.

C053034

(Super. Ct. Nos.
JD224111, JD224112,
JD224113, JD224114)

Appellant, the mother of the minors, appeals from the juvenile court's jurisdictional and dispositional orders. (Welf. & Inst. Code,¹ §§ 360, subd. (d), 395.) Appellant claims the risk of harm at the time of the jurisdictional hearing was insufficient to support the jurisdictional findings and removal of the minors. We shall affirm.

¹ All further statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2006, juvenile dependency petitions were filed by the Sacramento County Department of Health and Human Services (the Department) concerning the minors -- 17-month-old K. L., five-year-old C. A., 11-year-old J. A., and 14-year-old S. C. -- alleging there was a substantial risk they would suffer serious physical harm or illness as a result of appellant's failure or inability to adequately supervise or protect them and because appellant's mental illness, developmental disability, or substance abuse rendered her unable to provide them with regular care. (§ 300, subd. (b).) At a contested jurisdictional and dispositional hearing, the juvenile court sustained the allegations in the petitions and ordered out-of-home placement for the minors.

Three incidents were alleged in support of the petitions. First, it was alleged that approximately three weeks before the filing of the petitions, appellant's home was found to be flooded with sewage and without electricity. Second, it was alleged that appellant suffered from psychiatric or emotional problems that impaired her judgment and that she had been placed on an involuntary psychiatric hold approximately eight months earlier, after she was "found . . . holding two kitchen knives and screaming at imaginary people in the home." Finally, the petitions alleged appellant had failed to obtain medical treatment for K. L., who has mild congestive heart failure.

A

The First Allegation

The Condition Of The Home

The Department received a report in March 2006 that the toilet in appellant's residence was overflowing, there was one to two inches of raw sewage in the home, and the electricity had been turned off for two days. A code enforcement officer who inspected the residence reported that he saw "piles of garbage, insects, clothes and assorted items piled throughout the apartment" and that "the home had been filthy before the sewage leak." The residence was deemed uninhabitable. The code enforcement officer also saw "substances he believed to be illicit drugs and glass smoking pipes in the home." During his contact with appellant, the code enforcement officer noted she had slurred speech and spoke "as if 'in slow motion.'"

Eviction procedures previously had been initiated against appellant, who was delinquent in rent payments. It was reported to an eviction specialist that appellant caused the sewage problem by stuffing diapers and clothes hangers down the toilet. The eviction specialist went to the residence the day after the sewage problem was reported and observed appellant and several other people using glass pipes and smoking something other than marijuana. There was debris and food all over the kitchen and piles of trash, and "'it looked like the garbage hadn't been emptied in a month.'" The eviction specialist had been told by an upstairs neighbor that appellant had threatened him with a gun, and she saw a gun in the living room.

According to appellant, she sent K. L. and S. C. to stay with a friend when the toilet broke, which she maintained was two days before the electricity was turned off. She denied that any room other than the bathroom had overflow from the toilet. Appellant gave the social worker the address of a friend with whom she was residing and stated that K. L. and S. C. could reside there with her. The other two minors had been placed with the paternal grandparents.

Both J. A. and S. C. reported that the condition of the family residence was "'fine.'" S. C., who was interviewed just after being placed in protective custody, said the minors had been in the home for no more than a day after the plumbing problems occurred. At the jurisdictional hearing, S. C. testified that she was only in the home for a couple of hours after the plumbing problems occurred and the electricity was still on when she left the residence. However, the juvenile court found S. C.'s testimony lacked credibility.

B

The Second Allegation

Appellant's Psychological Problems

In August 2005, appellant called police because she believed her ex-boyfriend and another man were hiding in her closet. Appellant was found standing in her bedroom "holding two kitchen knives and screaming at imaginary people." The home was searched and no one was found. S. C. and C. A. were present in the home during the incident.

Shortly after the incident, appellant "admit[ted] she ha[d] not actually seen people in [the] house." However, she maintained her ex-boyfriend had been stalking her and breaking into her home "at will" and that she knew he had broken in because "'things w[ould] be moved around a little bit.'"

At the time of the incident, S. C. told law enforcement officers that appellant frequently saw people in the home who were not there and that, more than once, she had been awakened by appellant screaming at people she thought were hiding in the home. S. C. later denied she had made these statements. C. A. told Brent Hoppe, a social worker assigned to the case shortly after the incident, that a similar incident had occurred once before and that appellant had "'seen monsters in the apartment before.'" He also reported that appellant "dr[a]nk[] beer, and champagne" and that she let C. A. drink champagne. J. A. told Hoppe that something like this had happened once before, "but he refused to go into any detail." When asked if there had ever been a problem with people going in and out of the home, he stated, "'I'm afraid I can't answer that question.'" Several days later, after the petitions were filed, J. A. "stated he could not talk about [appellant]'s behavior or possible use of drugs" and "ended the conversation quickly."

According to a paternal aunt who was interviewed by Hoppe, the minors gave "'strange and evasive'" responses to questions about the home, as if there was a "'code of silence'" among them.

Appellant was placed on an involuntary psychiatric hold but was released the next day with a diagnosis of having a transient paranoid episode. The psychiatric records noted there was a possibility that appellant was being stalked by an ex-boyfriend, as appellant's friend had corroborated this.

Following appellant's hospitalization, she agreed to participate in voluntary services. During the period that services were provided, the home was dirty at times and there were small items on the floor that a baby could choke on. Appellant also would "dress[] inappropriately . . . expos[ing] her underwear and some of her private areas to the [male family maintenance social] worker." Appellant only minimally engaged in services and, two months before the petitions were filed, she told the Department she no longer was interested in participating.

During an interview with the social worker after the petitions were filed, appellant would not discuss some of the social worker's questions because she felt they were irrelevant "to the actual situation, which was that there were men who broke into her home on a regular basis." She also repeated questions several times, had difficulty focusing, and had slow speech. During another interview, appellant became extremely upset and "ended the meeting by yelling that she intended to 'get a real lawyer, and sue CPS and call all the magazines and newspapers about what [they were] doing.'" Appellant refused to submit to drug testing, claiming she had never used alcohol or taken drugs. However, in addition to C. A.'s previous

disclosure concerning appellant's alcohol use, the paternal grandmother reported that appellant "drinks alcohol."

C

The Third Allegation

Failure To Obtain Medical Treatment

K. L. was seen by a cardiologist in January 2005 for mild congestive heart failure and "'VSD'" (presumably, ventricular septal defect). A six-week follow-up appointment was scheduled, but appellant canceled or did not show up for four subsequent appointments. K. L.'s follow-up appointment finally took place in December 2005. Despite contrary reports from K. L.'s cardiologist, appellant claimed she had always taken K. L. to the doctor as necessary.

DISCUSSION

I

Current Risk Of Harm To Minors

Appellant asserts there was insufficient evidence of a current risk of harm to the minors at the time of the jurisdictional hearing. We disagree.

A child comes within the jurisdiction of the juvenile court if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." (§ 300,

subd. (b).) As noted by appellant, the risk of harm to the child must be present at the time of the jurisdictional hearing in order to sustain a dependency petition. (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388; *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.)

When the sufficiency of the evidence is challenged on appeal, the reviewing court "must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence--that is, evidence which is reasonable, credible, and of solid value" to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924.) In making this determination, "[a]ll conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the [order], if possible." (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.)

Turning to the minors' matters, we conclude there was ample evidence to support jurisdiction. During the incident leading to appellant's involuntary hospitalization in August 2005, she was found in the bedroom of her residence, holding two knives and screaming at people who were not there. Appellant was convinced there were intruders hiding in the home and that her ex-boyfriend had been coming in and out of the residence. At least two of the minors were present in the residence at the time. According to statements by S. C. at the time of this incident, appellant frequently saw people in the residence who were not there, and S. C. had been awakened on more than one occasion by appellant screaming at people who she believed were

hiding in the residence. The other minors told similar, if less detailed, accounts. We disagree with appellant that the minors were not exposed to any risk of harm as a result of such conduct. A parent who yells and wields knives at imaginary people in a home where children are present poses a danger to those children.

Moreover, the evidence supported the conclusion that appellant continued to suffer from mental health problems following the incident in August 2005. Such evidence included appellant repeatedly "'expos[ing] her underwear and some of her private areas'" to the family maintenance social worker while receiving voluntary services, her continued insistence that men "broke into her home on a regular basis" after the petitions were filed, and her affect as observed by both the code enforcement officer (slurred, slow speech) and the current social worker (repeating questions, difficulty focusing) during the period immediately preceding the jurisdictional hearing. Appellant's denial of any drug or alcohol use combined with evidence that she drank alcohol and recently had used drugs lent further support to the conclusion that she was not able to safely care for the minors. And the juvenile court could properly view the condition of appellant's home and her failure to obtain necessary medical care for the minors as additional evidence of ongoing psychological issues.

Appellant's argument separately addresses each of the incidents alleged in the petitions. She claims there was no current risk to the minors because her involuntary

hospitalization occurred ten months earlier, K. L.'s medical situation had been addressed and she had obtained suitable housing for the minors. We disagree that each incident can be viewed in isolation in reaching a determination concerning the minors' welfare in appellant's care. Appellant's mental condition at the time of her involuntary hospitalization posed a substantial risk to the minors, and the evidence as a whole supports the juvenile court's conclusion that the problems leading to her hospitalization ten months before the jurisdictional hearing had not been resolved.

Appellant also argues there was evidence to support her claim that she was being "stalked." However, the juvenile court was entitled to reject such evidence, which consisted of only a notation in appellant's psychiatric records that her friend corroborated her report of being stalked by an ex-boyfriend.

Evidence of past conduct is probative of current conditions, particularly where there is reason to believe the conduct will continue in the future. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) Such was the case here. Substantial evidence supports the juvenile court's determination that the minors continued to be at substantial risk of harm at the time of the jurisdictional hearing.

II

Removal Of The Minors

Appellant also claims the juvenile court erred by removing the minors from her care. Again, we disagree.

To remove a child from a parent's physical custody, the juvenile court must find clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1).)

Again, we review the juvenile court's determination in this regard under the substantial evidence test, drawing all reasonable inferences to support the findings and recognizing that issues of credibility are matters for the juvenile court. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 170.)

Here, evidence supported the conclusion that the older minors were prepared to withhold the truth to protect appellant and the younger minors were not old enough to protect themselves. J. A. had been evasive with the social worker about appellant's behavior and about the condition of the home, and S. C. denied making statements to police officers describing appellant's irrational behavior. The minors' aunt had noted that they seemed to have a "'code of silence'" with regard to disclosing information about what occurred in the home. In light of the risks posed by appellant's mental health issues and the unlikelihood that the family would cooperate in the event that problems emerged, the evidence supported the juvenile

court's conclusion that there would be a substantial danger to the minors if left in appellant's care.

Appellant argues that the juvenile court could have ordered her to comply with drug testing and to participate in other services while allowing the minors to remain in her care. However, appellant had not cooperated in any meaningful way in the past when voluntary services were offered, and such services had not been successful in alleviating the problems in the family. As appellant continued to deny that she had any mental health or substance abuse issues, the juvenile court was warranted in concluding there was no reasonable alternative to removal.

DISPOSITION

The juvenile court's orders are affirmed.

ROBIE, J.

We concur:

NICHOLSON, Acting P.J.

RAYE, J.